UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In Re:

ELDRIDGE PROPERTIES, INC.,

Debtor.

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Case No. 1-16-44514-nhl

CHAPTER 7

APPLICATION

TO: HONORABLE NANCY HERSHEY LORD
UNITED STATES BANKRUPTCY JUDGE

The application of Helen Skarla (hereinafter "Skarla") by her attorneys Sweeney, Reich, & Bolz, LLP[1], alleges, affirms, and sets forth as follows:

1. On or about October 5, 2016, the debtor Eldridge Properties, Inc. (hereinafter referred to as the "Debtor"), filed the above-entitled bankruptcy petition (the "Petition") under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Code").

2. Ms. Skarla moves for an order modifying and terminating the automatic stay and permitting her to proceed with a pending litigation for breach of fiduciary duty and other grounds in the pending state court action entitled Helen Skarla, plaintiff, v. NPSFT LLC, et al., defendants, Supreme Court Queens Co. Index No. 90/2014.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(a), 28 U.S.C. § 157(b)(2)(G), which is a core proceeding.

BACKGROUND

4. At all relevant times, Ms. Skarla is the owner of commercial and residential property known as 23-33 31st Street, Long Island City, New York (Block and Lot: 835 & 25) and 329 150th Street, Whitestone, New York (Block and Lot: 4507 & 8).

5. In connection with the purchase of her residence, 329 150th Street, Whitestone, New

[1]Sweeney, Reich & Bolz, LLP are counsel to Ms. Skarla in the pending state court litigation and have conducted searches, obtained documents produced under discovery orders and devices, and through investigations of the allegations made herein.

York, Ms. Skarla was represented by her attorney Kostas Golfinopoulos ("Golfinopoulos").

6. Ms. Skarla applied for a purchase money mortgage loan with Paragon Federal Credit Union ("Paragon"). As a condition to the financing, Paragon required that Ms. Skarla provide additional collateral to lien the commercial parcel known as 23-33 31st Street, in Long Island City.

7. At all relevant times, Ms. Skarla was represented by Mr. Golfinopoulos in the purchase transaction, and subsequent landlord tenant proceedings.

8. On or about October 4, 2004, Ms. Skarla signed a note payable to Paragon in the principal sum of $900,000. Mr. Golfinopoulos witnessed her signature. A copy of the Note is annexed hereto as Exhibit "A".

9. The Note is secured by a Mortgage, of even date, in the principal sum of $900,000, encumbering the properties described herein as 23-33 31st Street, Long Island City, New York (Block and Lot: 835 & 25) and 3-29 150th Street, Whitestone, New York (Block and Lot: 4507 & 8) (hereinafter referred to as the "Properties"). A copy of the Mortgage is annexed hereto as Exhibit "B".

10. Ms. Skarla continued to retain the services of Mr. Golfinopoulos after she closed on the purchase money loan with Paragon, and he represented her in landlord tenant proceedings and entered into Stipulations of Settlement on her behalf. A record of the landlord tenant proceedings is annexed hereto as Exhibit "C".

11. Ms. Skarla retained the services of Mr. Golfinopoulos in connection with an extension agreement and subsequent forbearance agreement to stave off a foreclosure against the Properties. A record of the extension agreement and forbearance agreement is annexed hereto as Exhibit "D".

12. Mr. Golfinopoulos represented Ms. Skarla during the pendency of a foreclosure proceeding against the Properties in the matter entitled Paragon Federal Credit Union, plaintiff, v. Helen Skarla, et al., defendants, Queens Co. Index No. 10936/2007 (the "Foreclosure

Action"), and signed a Stipulation Withdrawing Answer With Prejudice on her behalf. Copies of the Stipulations in connection with the Foreclosure Action are annexed hereto as Exhibit "E".

13. Mr. Golfinopoulos monitored the foreclosure proceeding, and opposed Paragon's initial application for judgment to sell the Properties in one parcel. A record of Mr. Golfinopoulos' appearance is annexed to Exhibit "E".

14. While Mr. Golfinopoulos represented Ms. Skarla, he negotiated an assignment transaction with the attorneys for Paragon at a short payoff amount of $1,100,000. A record of the negotiations is annexed hereto as Exhibit "F".

15. Around the time of said negotiations, Mr. Golfinopoulos stopped all communication with Ms. Skarla and failed to inform her of the short payoff transaction. The transaction was contingent upon the plaintiff obtaining an entered judgment of foreclosure and sale.

16. On or about March 7, 2013, judgment of foreclosure and sale was entered in the Foreclosure Action. The Judgment provided (at P. 7) for the Properties to be sold in separate parcels. A copy of the entered Judgment is annexed hereto as Exhibit "G".

17. Paragon's attorney notified Mr. Golfinopoulos that the balance of funds had not been received and he was in breach of their agreement. A copy of the e-mail communications produced through discovery are annexed hereto as Exhibit "H".

18. The balance was paid and Visions Federal Credit Union, as successor by merger with Paragon, delivered an assignment in favor of the debtor, Eldridge Properties, Inc. The Assignment was not recorded until months later, after Mr. Golfinopoulos conducted a sale of the Properties in foreclosure. A copy of the Assignment is annexed hereto as Exhibit "I".

19. Mr. Golfinopoulos took control over the foreclosure proceedings, after he stonewalled Ms. Skarla. Ms. Skarla had no choice but to discharge her attorney and replace him in the Foreclosure Action. Mr. Golfinopoulos noticed the Properties for sale, but failed to send notice of the sale to Ms. Skarla even though she had appeared and was entitled to notice. Copies of e-mail communications between Kostas Golfinopoulos and the publication firm are annexed

hereto as Exhibit "J".

20. At the time and place of sale, the Properties were sold in one parcel, despite the fact that a single parcel would have been enough to satisfy the Judgment amount of $1,120,014. Ms. Skarla had the Properties listed with a realtor who stated that the bid price was shockingly low. Copies of the Court Transcript of the Bidding Results and Realtor's information are annexed hereto as Exhibit "K".

21. The Referee executed Terms of Sale dated May 2, 2013, demonstrating that the Plaintiff outbid for the price of $1,725,000[2]. The Properties were worth far in excess of that price. The Referee executed a Report of Sale demonstrating a total Judgment amount of $1,335,844.47 as of the closing on the Referee's sale. The Referee executed Deeds to the Properties, transferring the title to the Debtor, Eldridge Properties, Inc. Copies of the Terms of Sale and Report of Sale, and recorded Deeds, are annexed hereto as Exhibit "L".

22. Skarla was destitute at this point. Mr. Golfinopoulos had previously told her to vacate the Properties in order to market them which she did. She retained an attorney who investigated the facts and circumstances and then moved to set aside the sale of the Properties in the Foreclosure Action.

23. However, before the sale of the Properties was set aside, Mr. Golfinopoulos found investors interested in buying the Properties and the debtor, Eldridge Properties, Inc., closed on an arm's length transaction for the reported price of $1,850,000. Copies of the recorded Deeds to NPSFT, LLC and NPSFT1, LLC are annexed hereto as Exhibit "M".

24. By Order dated October 17, 2014, the Supreme Court (Strauss, J.) vacated the foreclosure sale which was held in violation of the Judgment, vacated the Referee's Deed and subsequent deeds which were thereafter stricken from the records of the City Register. Copies of the Court Order entered and recorded against the Properties are annexed hereto as Exhibit

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[2] The Referee's bidding notes were made on the last page of the Terms of Sale, showing that the Plaintiff outbid all offers.

"N".

25. There is an appeal pending from the Order of the Supreme Court which set aside the foreclosure sale and had stricken the record deeds. There is also a stay of the Foreclosure Action pending the outcome of the appeal. A copy of the Order to Show Cause by NPSFT, LLC and NPSFT1, LLC is annexed hereto as Exhibit "O", together with a copy of the Decision and Order of the Appellate Division, Second Department, dated May 22, 2015, staying the Foreclosure Action pending a hearing and determination of the appeal.

26. NPSFT, LLC and NPSFT1, LLC have claims for equitable subrogation, having paid the purchase price of $1,850,000 to Eldridge. The Deeds are dated June 5, 2013. Copies of bank checks (obtained under court ordered subpoenas) made payable to and endorsed on behalf of the debtor in the sum of $1,760,000, representing the balance due at closing, are annexed hereto as Exhibit "P".

27. Within approximately twenty four (24) hours of the closing, checks payable from the debtor's Citibank account were disbursed to Mr. Golfinopoulos in the sum of $352,000 and his associate, Steven Louros, in the sum of $495,538. The same attorneys were involved in the assignment transaction as noted on email communications with Paragon's attorney. Copies of these bank checks are annexed hereto as Exhibit "Q".

28. In the pending state court litigation (Supreme Court, Queens Co. Index No. 90/2014), Mr. Golfinopoulos moved for summary judgment which was granted in part and denied with respect to Ms. Skarla's claims for breach of fiduciary duty, fraud and fraudulent concealment. In relevant part, the Supreme Court (Weiss, J.) determined as follows:

> Plaintiff commenced this action on January 6, 2014, asserting various claims, including causes of action against defendants Golfinopoulos for breach of fiduciary duty, fraud in the inducement, constructive fraud, fraudulent concealment, unjust enrichment and constructive trust. Plaintiff sought to set aside the judicial sale of the real properties known as 329 150th Street, Whitestone, New York (Block 4507, Lot 8) (the Whitestone property) (a residential property) and 23-33 31st Street, Long Island City, New York (Block 835, Lot 25) (the Long Island City property) (a commercial mixed-use property) (together "the mortgaged premises") held on May 3, 2013 pursuant to the judgment of foreclosure and sale entered in

> the action entitled *Eldridge Porperties, Inc. v. Skarla* (Supreme Court, Queens County, Index No. 10936/2007) (the foreclosure action), void the referee's deed to Eldridge Properties, Inc. (Eldridge), and the deeds from Eldridge to NPSFT LLC (NPSFT) and NPSFT 1 LLC (NPSFT1) (the NPSFT entities), impose a constructive trust on the Whitestone and Long Island City properties, pierce the veils of the corporate defendants so as to recover damages individually from their officers, directors and employees and for injunctive relief...
>
> Meanwhile, by order dated October 17, 2014 in the foreclosure action, the judicial sale of the Whitestone and Long Island City properties was vacated, and the referee's deed to Eldridge, and the subsequent deeds dated June 5, 2013 from Eldridge were stricken from the records of the City Register. By virtue of the vacatur of the foreclosure sale and setting aside of the deeds, record title of the mortgaged premises was returned to plaintiff.
>
> The NPSFT entities filed a notice of appeal of the October 17, 2014 order in the foreclosure action.
>
> Defendants Golfinopoulos move pursuant to CPLR 3211 and 3212 for summary judgment dismissing the remainder of the complaint (originally filed under Index No. 90/2014) insofar as asserted against them...[t]hose causes of action are based upon breach of fiduciary duty (first cause of action), fraud in the inducement (third cause of action), constructive fraud (fourth cause of action), fraudulent concealment (fifth cause of action)...
>
> Plaintiff opposes the motion by defendants Golfinopoulos and seeks to lift the protective order...
>
> Defendants Golfinopoulos furthermore have failed to establish their prima facie showing of entitlement to summary judgment dismissing the remainder causes of action...based upon breach of fiduciary duty and fraud insofar as asserted against them. They have not addressed the factual issues regarding whether defendants Golfinopoulos acted on behalf of defendant Eldridge in the acquisition of the note and mortgage and the conveyance of the properties to the NPSFT entities. Questions of fact also exist as to whether defendants Golfinopoulos committed any misconduct constituting breach of fiduciary duty, fraud in the inducement, constructive fraud and fraudulent concealment...[co]ntrary to the assertion of defendants Golfinopoulos, the complaint sufficiently details the allegations of fraud...

A copy of the Order date January 27, 2016 and entered in the office of the Queens County Clerk on January 28, 2016 is annexed hereto as Exhibit "R", together with a recent pre-trial order.

29. To date, despite the fact that the state court overturned the foreclosure sale and subsequent deed transfers, the proceeds of the sale from the NPSFT entities to the debtor,

Eldridge, have not been returned and the third party purchasers have a claim for equitable subrogation as the owner of the note and mortgage in foreclosure which is now the subject matter of an appeal before the Appellate Division.

30. On or about January 17, 2016, debtor's attorney advised the Appellate Division of the automatic stay.

REQUEST FOR RELIEF

31. Ms. Skarla moves for an order modifying and terminating the automatic stay and permitting her to proceed with the pending litigation in the state court action for breach of fiduciary duty, fraud and fraudulent concealment. Mr. Golfinopoulos had a duty, as her attorney, to inform Ms. Skarla that he was negotiating a short payoff of the note and mortgage to allow her to satisfy her mortgage indebtedness and resolve the Foreclosure Action. Without informing Ms. Skarla, he negotiated a payoff by assignment to his client Eldridge, procured an assignment and published the properties for sale in violation of the decretal provision of the Judgment of Foreclosure and Sale. The state court determined that there are issues of fact whether Mr. Golfinopoulos represented Eldridge in the assignment transaction and in the resale transaction to the NPSFT entities. The appeal before the Appellate Division will resolve the issue of which entity, the debtor or the NPSFT entities, is the true owner of the note and mortgage in foreclosure. The state court litigation under Index No. 90/2014 has no impact on this Chapter 7 proceeding, as the debtor has already received the proceeds of the third party sale to the NPSFT entities, the debtor has filed schedules indicating that there are no monies in the Citibank account, there are no pending adversary proceedings herein and there is no prejudice to the creditors herein which have resorted to state court litigation.

32. Pursuant to Section 362(d), Ms. Skarla moves for an Order modifying and terminating the automatic stay for cause. Section 362(d) of the Code provides in relevant part as follows:

> On request of a party in interest and after notice and a hearing the court shall grant relief from the stay provided under subsection (a) of this section, such

as by terminating, annulling, modifying or conditioning such stay–

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; ...

(2) with respect to a stay of an act against property under subsection

(a) of this section, if- the debtor does not have an equity in such property; and

(b) such property is not necessary to an effective reorganization.

33. The movant seeks relief to proceed with state court litigation. The movant is inadequately protected while the automatic stay has stopped all proceedings to resolve the issue of legitimate claims for breach of fiduciary, fraud and fraudulent concealment by Mr. Golfinopoulos who it appears is using the debtor as a mere conduit. The Schedules of the Chapter 7 petition show no liabilities of the debtor and only pending litigation. The debtor is not operating as an ongoing concern inasmuch as the Citibank account is empty and there are no employees or payroll, there is no entity or assets to wind up and liquidate. Furthermore, the debtor alleges to hold personal property in the sum of $900,000, consisting of the note and mortgage in foreclosure. There is no indication from the Schedules of the Petition that the debtor is insolvent and there are no creditors with debts for distribution (other than alleged un-secured claims for legal fees by Paul E. Kerson, Esq. and Steven D. Fink, Esq., both residing in the same office building, for representing Eldridge in the state court litigation; neither claim having been court ordered or reduced to judgment). Accordingly, the filing of the instant Petition was not to liquidate the assets of the debtor to satisfy creditors in bankruptcy. The only purpose of the filing was to stay the sate court litigation on the eve of court ordered depositions[3]. Such purpose is not a legitimate attempt to liquidate or reorganize the affairs of the debtor. 11 USC 362(d)(1).

34. The debtor has no equity or beneficial interest in the Properties. The NPSFT entities

[3]Copies of recent pre-trial discovery orders are annexed to Exhibit "R".

claim ownership of the note and mortgage under the doctrine of equitable subrogation. The claims are before the Appellate Division and the Foreclosure Action is stayed. Accordingly, there are no assets or equity for distribution herein. 11 USC 362(d)(2).

35. In support of its motion for relief, Ms. Skarla submits herewith documentary evidence, consisting of land records, documents entered in the Foreclosure Action, decisional law entered by the Supreme Court and Appellate Division, banking records produced in the state court action, establishing that the debtor no longer owns the note and mortgage or that debtor's ownership is the subject of litigation before the Appellate Division, Second Department. The filing of the instant Chapter 7 petition serves no legitimate purpose other than to stay state court litigation on the eve of court ordered examinations before trial. *In re Toulomis,* 170 B.R. 825 (Bankr. S.D.N.Y. 1994) (creditor moving for relief to continue litigation in another forum has initial burden of demonstrating cause exists to lift the stay; 11 U.S.C. 362[d][1]).

36. By vacating the stay, Ms. Skarla can proceed to resolve the issues of Mr. Golfinopoulos' breach of fiduciary duty, fraud and fraudulent concealment, which will have no impact on the debtor's estate since there are no legitimate claims or equity for distribution and no creditors will be prejudiced by granting relief of the stay. *See e.g., In re Horowitz,* 2010 WL 814103 (Bankr. E.D.N.Y. 2010) (applying the non-exclusive factors of *In re Sonnax* to the debtor's Chapter 7 proceeding and abstaining from hearing the adversary which was based on pre-petition state law claims, e.g., common law fraud) ; *In re Personal Communications Devices, LLC*, 556 B.R. 45 (Bankr. E.D.N.Y. 2016) (bankruptcy court may abstain from hearing an action in the interest of justice or in the interest of comity with state courts).

37. Furthermore, there are no adversary claims herein as they are all before the state court. In the interest of justice and judicial economy and expeditious and economical resolution of litigation, Ms. Skarla seeks to proceed in the state court litigation, which had been pending since 2014 and is at examinations before trial. Said depositions have been staved off for many years by reason of motions to dismiss, motions for summary judgment and other frivolous

conduct by Mr. Golfinopoulos. As aforesaid, the state court determined that there is an issue of fact whether Mr. Golfinopoulos acted on behalf of the debtor, Eldridge, in negotiating the assignment and in the conveyance of the Properties to the NPSFT entities. The debtor has already been satisfied from the proceeds of sale with the NPSFT entities. The Chapter 7 Trustee cannot liquidate the asset, i.e., the note and mortgage. Accordingly, all issues must be decided before the state court and Appellate Division and "cause" exists to vacate the automatic stay as the instant petition is merely a litigation tactic to stall the state court litigation. *See e.g, In re HBA East, Inc.*, 87 B.R.248 (Bankr. E.D.N.Y. 1988) (as a general rule where the timing of a petition is such that there can be no doubt that the primary, if not sole, purpose of the filing was a litigation tactic, the petition may be dismissed as not being filed in good faith); *In re Briarpatch Film Corp.*, 281 B.R.820 (Bankr. S.D.N.Y. 2002) (Chapter 11 case that was filed on behalf of dissolved corporation which had not engaged in any business for years and which did not have any assets, in apparent attempt to provide basis for removal of state court causes of action when state court was about to enter adverse judgments against debtor and its principals, had to be dismissed as bad faith filing).

38. Ms. Skarla seeks an Order modifying the automatic stay and allowing her to proceed with the state court litigation in the matter entitled Helen Skarla v. NPSFT LLC, et al., Queens Co. Index No. 90/2014.

39. Ms. Skarla submits herewith a proposed Order modifying and terminating the automatic stay. A copy of the Order is annexed hereto as Exhibit "S".

40. No prior application for the relief requested herein has been made.

41. Ms. Skarla respectfully requests that the Court waive, at this time, the requirement under local Bankruptcy Rules for submission of a supporting memorandum of law. It appears that no unique issues of law or fact are presented in this application. If, however, it appears from any answering papers that a supporting memorandum of law has become necessary, Ms. Skarla reserves its right to submit a reply memorandum.

WHEREFORE, Ms. Skarla respectfully requests that this Court enter the annexed proposed order vacating the automatic stay and permitting her to proceed with the state court litigation, and such other and further relief as may be just and proper.

Dated: Lake Success, New York
January 19, 2017

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